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19 May 1954

*Personnel 11-1*  
*LS 9936*  
*AN01*

MEMORANDUM FOR THE RECORD

SUBJECT: Discussions with USAF JAG

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1. Messrs. Houston and [REDACTED] met with General Albert M. Kuhfeld, Assistant Judge Advocate General, United States Air Force, on 17 May 1954. The immediate purpose of the discussion was related to the possibility of court martial proceedings by the Air Force against EE. It had been our thought that possibly under the new Uniform Code of Military Justice there would be some method of recalling EE to active duty for the purpose of court martial proceedings arising out of his illegal activities while on extended active duty with the Air Force and detailed to CIA.

2. General Kuhfeld pointed out that of course the recall provisions only extended to those cases where there was no Federal court which could take jurisdiction. It was suggested that since the Government, for security reasons, could not permit a civilian court to take jurisdiction, possibly the Air Force could act. However, General Kuhfeld indicated that this did not appear to warrant the Air Force asserting jurisdiction and that in view of past decisions, the courts would hold against the Air Force. Such holding would be also consistent with the general philosophy that the military trials would not be conducted if there were any possible civilian remedy, and particularly so where the individual has since been released from military service. General Kuhfeld pointed out further that even if EE were to voluntarily resume a military status, the honorable discharge from active service would operate to bar any proceedings for improper activities prior to the date of discharge.

3. In reply to our queries, General Kuhfeld pointed out that a court martial could be held on a restricted basis, i.e., the records would be classified and all participants could be properly security-cleared personnel. This could extend even to defense counsel for the accused, operating on the theory that the right of accused to choice of counsel was subordinate to the national interest if security matters were to be raised in the trial. Consequently, they would probably appoint security-cleared service personnel as defense counsel. However, General Kuhfeld did agree that there was no bar to permit the accused civilian counsel of his choice and then having the civilian counsel security cleared. Under the Uniform Code of Military Justice, the appeals of substance are completely within the executive department, and the only access to the courts would be on the question of jurisdiction which normally would not run to the facts of the case which required its classification.

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4. The above brought to mind the possibility of a court martial of one JG since he was an employee of a contractor to the Air Force within the meaning of the Administrative Agreement applying in Japan and presumably was subject to military jurisdiction. Since the improper activities concerned occurred abroad in violation of military laws, probably the individual could be subjected to court martial jurisdiction and could be arrested in the United States. (Further checking indicates that the violations under the Military Code are now barred by the statute of limitations).

5. Returning to the case of EE, it was of course pointed out by General Kuhfeld that the appropriate information about EE's activities should be referred to the Air Force for appropriate administrative action, presumably looking toward stripping EE of his reserve commission. We agreed that after preliminary discussion with the Department of Justice, the Air Force was entitled to have this information.

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6. The points mentioned above, plus other details discussed in our meeting, lead us to the conclusion that in every case where an individual [REDACTED] is under military jurisdiction and there is some suspicion of wrongdoing, there should be an early determination of proper action to be taken against the individual. Proper consultations should be held with all offices concerned to assure that the individual's status is not changed so as to remove him from military jurisdiction. It would appear that in many cases a court martial proceeding would serve the ends of justice while, at the same time, preserving a proper degree of security.

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[REDACTED]  
Deputy General Counsel

cc: I & R  
Security Office  
Audit Office  
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